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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,995	12/30/2003	Edward John Giblin	C6654(C)	6570
201	7590	06/15/2004	EXAMINER	
UNILEVER PATENT DEPARTMENT 45 RIVER ROAD EDGEWATER, NJ 07020			NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/747,995

Applicant(s)

GIBLIN ET AL.

Examiner

Frederick C. Nicolas

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7,9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ekkert et al. 5,435,467.

Ekkert et al. disclose a fitment (30), which comprises a circumscribing wall (70), a floor (64) extending inwardly from the wall, a pour spout (50) ascending from an inward portion of the floor, the circumscribing wall has an upper edge (79) that defines a circumscribing wall opening having a given area as seen in Figure 2, the pour spout has a top edge (58) that defines a pour spout opening (52) having a given area as seen in Figures 2 and 6, a ratio of the pour spout area to the circumscribing wall area as seen in Figure 2, a flange (78), a slot (66). Ekkert et al. lack that the ratio of the pour spout area to the circumscribing wall area is greater than about 0.20.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ratio of the pour spout area to the circumscribing wall area of Ekkert et al. to be greater than about 0.20, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. As per MPEP 2144.05

With respect to claims 2 and 10, that the ratio of the pour spout area to the circumscribing wall area is greater than about 0.25, as well as claims 3-4,12-13.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ratio of the pour spout area to the circumscribing wall area of Ekkert et al. to be greater than about 0.25/or 0.30/or 0.35, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. As per MPEP 2144.05

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ekkert et al. 5,435,467 as applied to claim 8 above, and further in view of Haffner et al. 5,462,202.

Ekkert et al. have taught all the features of the claimed invention except that one or more ribs, which extend from an exterior wall of the pour spout outwardly towards the circumscribing wall. Haffner et al. teach the use of a fitment (25) having a pour spout (26), the pour spout has one or more ribs (46), which extend from an exterior wall of the pour spout outwardly towards a circumscribing wall (col. 3, ll. 8-17).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the one or more ribs of Haffner et al. onto the exterior wall spout portion of Ekkert et al., in order to facilitate stacking of the fitments.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Arnold et al. 5,855,299, Li 4,706,829, Haffner et al. 5,566,862,

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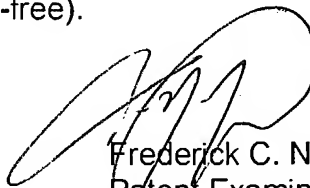
Moore et al. 5,058,772, Campbell et al. 4,917,268, Giblin et al. 6,398,076, Davidson et al. 5,108,009 and Krall 5,207,356 disclose other types of fitment.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on 703-308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
June 14, 2004

 6/14/04  
Frederick C. Nicolas  
Patent Examiner  
Art Unit 3754